REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **LPA NO. 437 OF 2006**

% **Date of Decision** : 20th December, 2007.

DR. SAMARENDRA MOHAN MUKHERJEE .... Appellant in person.

VERSUS

INDIAN SCHOOL OF MINES, DHANBAD .... Respondent.
Through Mr. S.R. Narayan, Advocate.
Mr. Amitesh Kumar, Advocate for UGC.

CORAM:

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J:

1. Dr. Samarendra Mohan Mukherjee, the appellant who appears

in person, has filed this Appeal against the judgment dated 3rd January, 2006 passed in Writ Petition (Civil) No. 23/1988. The appellant has prayed for enhancement of compensation awarded to him in para 12 of the impugned judgment. Other observations and findings of the learned Single Judge have not been challenged and questioned by the appellant. No cross appeal has been filed by the respondent.

2. On 2nd February, 1987, applications were invited for appointment to the post of Registrar, Indian School of Mines, Dhanbad (hereinafter referred to as ISM, for short). The said post was in the pay scale of Rs.1500-2500/-. The advertisement specifically stated that the said pay scale was under revision.

3. The appellant was interviewed and placed at serial no.2. One Mr. S. Srikant was placed at serial no.1. The appellant who appears in person has drawn our attention to documents placed on record to show that Mr. S. Srikant was not eligible and did

not meet the eligibility criteria for appointment to the said post but he was wrongly and malafidely placed at serial no.1. He also submitted that Mr. S. Srikant had made a wrong statement about his educational qualifications etc. The appellant submitted that right from the beginning, the appellant was being discriminated due to sinister motives and prejudice against him.

4. ISM thereafter rejected the candidature of Mr. S. Srikant and issued offer of appointment to the post of Registrar vide letter dated 4th August, 1987 to the appellant. The letter of appointment stated that the pay scale offered of Rs.1500 – 2500/- was pre-revised. The appellant was asked to submit copy of the letter of appointment duly signed, in token of acceptance of the offer within ten days, failing which, the offer of appointment would stand cancelled.

5. The appellant accepted the said offer on 10th August, 1987 by making necessary endorsement on the letter of appointment and also by sending letter dated 10th August, 1987.

6. It was the case of the respondent, that ISM vide telegram dated 8th August, 1987 had informed the appellant that the offer of appointment dated 4th August, 1987 stood withdrawn for the time being. Subsequently, by another telegram, the appellant was intimated that position with regard to appointment to the said post would be intimated in due course. However, on 1st December, 1987, the appellant was informed that the Chairman/Executive Board had ordered cancellation of the existing panel for appointment to the post of Registrar and the said post would be re-advertised with revised pay scale.

7. Aggrieved, the appellant filed Writ Petition (Civil) No. 23/1988 in this Court, which was admitted on 16th August, 1988. The said writ petition was disposed of after nearly 18 years vide impugned judgment dated 3rd January, 2006. Learned Single Judge examined the contention of the parties in detail and came to the conclusion that the offer of appointment dated 4th August, 1987 was accepted by the appellant on 10th August,

1987 before the telegram dated 8th August, 1987 was received by him. It was held that the respondent had failed to produce any document to establish that the said telegram was received before acceptance dated 10th August, 1987 was despatched by the appellant. Learned Single Judge also held that ISM had acted arbitrarily in withdrawing the offer of appointment without any justifiable ground and cause. Pay revision was always in contemplation as was apparent from the advertisement dated 2nd February, 1987 inviting applications for the post of Registrar wherein it was mentioned that the pay scale of Rs.1500-2500/- was under revision. The fact that the pay scale was under revision was also mentioned in the offer of appointment dated 4th August, 1987. Thus mere pay revision was not a valid ground and justification for withdrawing the offer of appointment and denying appointment to the appellant, as revision of pay scale was on the anvil even when the post was advertised. Learned Single Judge has given a specific finding that the

appellant was wrongly and due to malice in law denied appointment as Registrar in ISM.

8. ISM has accepted the judgment passed by the learned Single Judge and has not filed any appeal against the said judgment. The appeal was admitted vide Order dated 8th May, 2006. Thereafter, no cross objections have been filed.

9. The appellant had submitted that the learned Single Judge has erred in restricting the relief to payment of difference of pay scale of Education Officer, University Grants Commission where the appellant was working in 1987 and the pay scale admissible to Registrar, ISM for the period between 1st September, 1987 and 1st September, 1988 with 6% interest for the period w.e.f. 1st January, 2000 till the date of payment of the amount. He submitted that the said finding has been erroneously made on the ground that the appellant was to be on probation for a period of two years. It was submitted that in terms of the judgment passed by the learned Single Judge, the

appellant would be entitled to about Rs.14,244/- or there about being the difference between the pay scale of the Education Officer, University Grants Commission and Registrar, ISM for a period of one year from 1st September, 1987 to 31st August, 1988 and Rs. 5128/- towards interest @ 6% per annum for six years.

10. The appellant has filed some charts/calculations by which he claims that he has lost about Rs. 9,91,501/- on account of difference in salary between the two posts. In view of the findings of the learned Single Judge, he claims that entire difference in salary including difference in pension, should be paid because respondent-ISM had wrongly failed to appoint him to the post of Registrar.

11. After filing of the writ petition in 1988, the Court by Order dated 7th April, 1988 had restrained the respondent-ISM from re-advertising the post of Registrar. On 16th August, 1988 by a detailed Order, a Division Bench of this Court disposed of the

application-C.M.No.44/1988, prima facie holding that the stand of the respondent-ISM in withdrawing the offer of appointment on the ground of revision of pay scale in the post of Registrar, was not justified. It was observed that in spite of repeated questioning, the respondent-ISM was not able to show what transpired between 4th August, 1987 when offer of appointment was issued to the appellant and then on 8th August, 1987 when the said letter was directed to be kept under abeyance. The Court also noticed that the post advertised was in the pay scale of Rs.1500-2500/- but it was clearly stipulated that the said pay scale was under revision. Therefore, mere revision of the pay scale was not justifiable reason and a ground to re-advertise the post after having followed the selection procedure and selecting the appellant.

12. The said Order was vacated ex-parte and without notice to the appellant vide Order dated 18th May, 1994 but the said Order was immediately stayed vide Order dated 1st June, 1994. By

Order dated 17th April, 1995 passed in C.M. No.4966/1994, learned Single Judge in the interest of justice and keeping in view the balance of convenience, allowed the respondent-ISM to re-advertise the post of Registrar and specifically observed that in case the appellant was to succeed in the writ petition, the Court had ample powers to give him necessary relief.

13. Keeping all these aspects in mind and in view of the peculiar facts of the case, we have to decide what relief should be granted to the appellant. As noticed by the learned Single Judge, the appellant superannuated on 30th June, 2000 from University Grants Commission and his claim for difference in pay scales, therefore, necessarily is for the period from 1987 till he superannuated i.e. in case he had been appointed as Registrar, ISM in terms of appointment letter dated 4th August, 1987. We have also to keep in mind the findings of the learned Single Judge in the judgment dated 3rd January, 2006 that the appellant was arbitrarily denied appointment and the facts

stated above, including the order dated 17th April, 1995 vacating stay passed in CM No. 4966/1994 holding that in case the appellant succeeds he shall be granted necessary relief.

14. In the present Appeal, notice was also issued to University Grants Commission with whom the appellant was working before his superannuation. This notice was issued to find out the pay scale and emoluments that had been paid to the appellant from 1987 till his superannuation on 30th June, 2000. It appears that the appellant was also promoted during this period in the University Grants Commission, first as Deputy Secretary and thereafter as Joint Secretary. However, we cannot be oblivious to the fact that in case the appellant was appointed as Registrar, ISM he may have progressed further. At the same time, this Court is not awarding damages in favour of the appellant and against the respondent-ISM. Law of damages also requires evidence, calculation by applying the principle of mitigation of damages, etc. Equities had to be

balanced. Keeping in mind the above circumstances and the factual matrix, payment of Rs.19372/- as directed in terms of the Order passed by the learned Single Judge is rather low. The appointment letter dated 4th August, 1987 stated that appointment could be terminated by one month's notice or one month's salary in lieu thereof by either side during the period of probation or in case of temporary appointment. Appointment offered to the appellant was permanent appointment, which would have entailed probation period in terms of service rules. This ground by itself however cannot justify payment of difference in salary restricted to a period of one year. The appellant had filed the writ petition in 1988 and succeeded after a long drawn battle vide judgment dated 3rd January, 2006. Supreme Court has also repeatedly observed that costs imposed on the losing party should be effective and corelateable to the expenditure that the party which has succeeded may have reasonably incurred. Moreover, this Court

by interim Order dated 17th April, 1995 had itself observed that in case the appellant was to ultimately succeed in the writ petition, the Court had ample power to give necessary relief to the appellant in the interest of justice. We may in this regard also refer to a recent decision of the Supreme Court in ***Bhagabati Das (Sarkar) versus Calcutta University and others*** reported in (2007) 7 SCALE 781 wherein a candidate was wrongly denied appointment to the post of Lecturer which was challenged in a writ petition. The writ petition was decided after a considerable time in favour of the candidate. Division Bench also upheld the decision of the Single Judge and directed that the candidate should be given the benefit of the pay scale of Lecturer. The Supreme Court, on appeal filed by the candidate, held that in view of the findings recorded by the Writ Court, the candidate was entitled to both back wages as well as retirement benefits which were required to be re-calculated. The respondents were also directed to pay costs

which was quantified at Rs.1 lac.

15. In view of above, we feel that the appellant should be paid a lumpsum amount of Rs. 2 lac by the respondent-ISM towards cost of litigation as well as to secure ends of justice as admittedly the appellant was wrongly denied appointment as Registrar, ISM. This will be also in accord with the Order dated 17th April, 1995 passed by the learned Single Judge that in the interest of justice the appellant would be compensated and granted necessary relief in case he was to succeed in the writ petition. Restricting relief to the difference in pay scales for a period of one year would be unfair and unjust to the appellant. Even if it is presumed that the appellant would have been on probation for a period of two years, it does not necessarily follow that he would not have been confirmed and appointed regularly after the expiry of the probation period. The impugned order passed by the learned Single Judge is accordingly modified and respondent-ISM is directed to pay

compensation of Rs. 2 lacs to the appellant. The aforesaid amount will be paid to the appellant within a period of 2 months, failing which the respondent shall be liable to interest @ 10% per annum from the date of this order.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

DECEMBER 20, 2007.
P/VKR